

**MEMORANDUM OF UNDERSTANDING**  
*between*  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
*and*  
**THE NATIVE VILLAGE OF TYONEK**  
*regarding*  
**THE PROPOSED CHUITNA COAL PROJECT**

Federally recognized tribal governments have a unique relationship with the United States (U.S.) as defined by the Constitution, treaties, statutes, court decisions and Executive Orders. The U.S. Environmental Protection Agency, Region 10 (EPA), and the Native Village of Tyonek (NVT) enter into this Memorandum of Understanding (MOU) for the purpose of maintaining effective consultation and coordination between the EPA and the NVT regarding the proposed Chuitna Coal Project.

**A. Recitals**

1. The Chuitna Coal Project (proposed project) is a proposed surface coal mining operation located along the west side of Cook Inlet within the Chuitna watershed in Alaska. The proposed project is currently in the permitting and environmental impact analysis processes. The EPA has transitioned from a lead federal agency to a cooperating agency in the National Environmental Policy Act (NEPA) review process. The EPA has committed to continued consultation and coordination with the NVT, consistent with the EPA's regulatory roles and responsibilities relating to the proposed project.
2. The NVT is a federally recognized Indian Tribe, located on the northwest shore of Cook Inlet, practicing a subsistence way of life that relies heavily on fishing and hunting. The NVT a sovereign tribe governed by a tribal council elected by its membership to be responsible for the protection of tribal culture, subsistence resources, assets, rights, setting of tribal priorities, and developing and managing tribal resources.
3. The EPA is a federal agency that is responsible for the protection of the environment and public health throughout the United States. The EPA has no direct permitting role in connection with the proposed project, but does have oversight, review, or approval roles in connection with regulatory processes that may be involved, including:
  - a. *NPDES Permitting Oversight.* The proposed project may require one or more wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES), pursuant to Section 402 of the Clean Water Act (CWA). Any such permit would be issued by the State of Alaska Department of Environmental Conservation through the Alaska Pollutant Discharge Elimination System (APDES) program, but EPA would have the authority to review the permit for consistency with the requirements of the CWA and implementing regulations.

- b. *404 Permitting Oversight.* The proposed project may require one or more permits under Section 404 of the CWA, authorizing the discharge of dredged or fill material into navigable waters or wetlands. Any such permit would be issued by the U.S. Army Corps of Engineers and certified by the State of Alaska, but EPA would have the authority to review it for consistency with the requirements of the CWA and implementing regulations.
  - c. *Water Quality Standards Approval.* The State of Alaska may seek to revise its water quality standards (WQS) in connection with the proposed project. Under Section 303 of the CWA any revisions to Alaska WQS would need ultimate review by EPA to ensure consistency with the requirements of the CWA and implementing regulations.
  - d. *Environmental Impact Statement Preparation.* The U.S. Army Corps of Engineers is in the process of preparing a Supplemental Environmental Impact Statement (SEIS), in order to comply with NEPA. Both the EPA and the NVT are participating in this process as cooperating agencies, according to an existing MOU, which remains in effect and is not affected by this MOU.
  - e. *Environmental Impact Statement Review.* Under Section 309 of the Clean Air Act EPA has the obligation to participate in the NEPA process, to review and comment on the EIS and, under certain circumstances, has the authority to elevate objections to the White House Council on Environmental Quality (CEQ).
- 4. The EPA and the NVT are establishing this MOU to provide a process for engaging in meaningful coordination regarding the proposed project. The timing and processes of the various regulatory actions involved are not yet determined, and neither the EPA nor the NVT is directly responsible for or has control over these regulatory actions or schedules.
  - 5. The EPA strongly encourages the NVT to work directly with the lead federal and state agencies for environmental review and permitting related to the proposed project. The EPA and the NVT each have independent responsibilities as cooperating agencies in the development of the EIS. This MOU between the EPA and the NVT does not affect or supersede the MOU between the cooperating agencies

### **B. Consultation Plan**

- 1. *Quarterly/Monthly Conference Calls.* The EPA and the NVT agree to conduct quarterly conference calls to discuss: the status of the various activities in which they are involved in connection with the proposed project; any review and permitting activities anticipated in the following six to twelve months; and potential opportunities for additional consultation and coordination between EPA and NVT staff or leadership, consistent with EPA's roles and responsibilities for the project, as described in the EPA Roles and Responsibilities Fact Sheet for the proposed project.
- 2. *Participants in Quarterly Calls.* The EPA participants in the quarterly calls will generally be the EPA's Chitna Coal Project Lead (currently Jamey L. Stoddard), and the EPA's Tribal Coordinator for south central Alaska (currently Katherine Brown). The NVT participants in the quarterly calls

will be \_\_\_\_\_. Depending on the agenda for each call, additional EPA or NVT representatives may be invited who can share more specific information regarding particular activities or issues.

3. *Scheduling Quarterly Calls.* The EPA's Chuitna Coal Project Lead and the NVT's \_\_\_\_\_ will jointly schedule and establish agenda topics for the quarterly calls.
4. *Additional Consultation and Coordination.* On each quarterly call, the participants may discuss what additional consultation and coordination may be appropriate within the next three to six months concerning upcoming activities. Additional technical information or document exchanges, discussions with technical or program staff, or discussions between EPA and NVT leadership may be scheduled as appropriate and as resources allow, given the activities anticipated, the timing of those activities, and the EPA's and the NVT's roles in those activities.

### **C. Effect and Limitations of this MOU**

1. This MOU is effective as of the last date signed below and will remain in effect until termination by either party by a written 30-day notice to the other party.
2. Nothing in this MOU is intended to expand, contract, or otherwise limit the sovereignty of the NVT.
3. By entering into this MOU the parties do not waive or create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity against any party of the United States, its agencies or instrumentalities, officers or employers or any other person.
4. The consultation and coordination contemplated by this MOU is intended to implement the Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994), and the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011). Consultation and coordination will be conducted in accordance with all EPA national and regional policies and guidelines. This MOU does not affect or supersede any existing EPA policy affecting federally recognized tribes.

The undersigned parties enter into this Memorandum of Understanding between the NVT and the EPA, Region 10.

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Dennis J. McLerran  
Regional Administrator  
EPA, Region 10

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Frank Standifer, III  
President  
Native Village of Tyonek

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Date

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Date